IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13722 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEIRS OF DECEASED AATAJI HEMAJI THAKOR & 2 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1 - 3.
Mr P R Abichandani, AGP for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 04/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr P R Abichandani, learned AGP waives service of notice of

rule for respondent no.1.

2. The petitioner owned agricultural land bearing Survey No.36 of village Dantali, Taluka Kalol, District Gandhinagar. The said land came to be acquired for a public purpose under the provisions of Land Acquisition Act, 1894 (for short 'the Act') The award was made by the Special Land Acquisition Officer on 4.2.1994 and compensation to the tune of Rs.48,000/- was awarded to the petitioner. It is the say of the petitioner that on account of shortage of funds, he could not prefer application under section 18 of the said Act requesting the Collector to make reference in the District Court for enhancement of the compensation. Ultimately, in other reference cases which were preferred by the owners of the lands which were acquired under the same acquisition proceedings, award was made wherein the compensation awarded by the Special Land acquisition Officer was enhanced. In view of the same, the petitioner preferred application under section 28A of the Act on 17.9.2001. However, by order dated 4.8.2003, the Special Land Acquisition Officer, Mehsana rejected the said application against which the present petition is preferred.

3. It is the case of the petitioner that his application under section 28A of the Act has been rejected solely on the ground that the certified copy of the award has not been produced along with the application which is illegal. Mr Patel has also raised same contention before us in support of

his case. He also placed reliance on the judgment delivered by this court on 16.6.2005 in Special Civil Application No.1475/05. In the said judgment, it has been held that while filing application under section 28A of the Act, the applicant is not required to produce the certificate copy of the award. Of course, if in the process of hearing of the said application, the concerned authority can call upon the applicant to produce the same but the application cannot be rejected on the ground of non- production of certified copy of the court's award. Obviously, therefore, the impugned order i.e the order dated 4.08.2003 is not legal and it deserves to be quashed and it is hereby quashed and set aside.

4. In view of the aforesaid, we now remit this application back to the Special Land Acquisition Officer-respondent no.2 herein for his consideration on its merits. It is also made clear that while examining the merits of the case, respondent no.2 will be entitled to consider all the aspects including that of the limitation. He may also verify whether any application by the petitioner in respect of this very acquisition of the land had been made earlier under the provisions of section 28A of the Act. If that be so, that can be a ground for respondent no.2 to reject this application. It is further made clear that in the event respondent no.2 comes to the conclusion that this application is required to be allowed, and compensation in line with the award made by the District Court is

required to be awarded to the petitioner together with interest, he will not grant interest for the period between 4.8.2003 and 31.8.2005, since the petition was filed as late as on 21st August, 2004 and got placed for hearing in the month of September, 2005.

5. With the aforesaid directions, this petition is allowed. Rule is made absolute accordingly.

[Kshitij R Vyas, J.]

msp [Akshay H Mehta, J.]